

Phil DeBusk

From: Larry Maxwell <Larry.Maxwell@tn.gov>
Sent: Friday, April 19, 2013 1:54 PM
To: Phil DeBusk
Subject: FW: Interstate Pest Control Compact
Attachments: IPCC Issue Paper 08232012.docx; IPCC - BOARD RESOLUTION AND PLAN OF DISSOLUTION.DOCX

Phil:

Additional information on the Interstate Pest Control Compact. Let me know if you have any questions or need additional information.

Larry

From: Jimmy Hopper
Sent: Friday, April 19, 2013 11:56 AM
To: Larry Maxwell
Cc: Walker Haun
Subject: Interstate Pest Control Compact

Larry, attached you'll find 2 documents relative to the dissolution of the Interstate Pest Control Compact. The "Issue Paper" explains why the Compact dissolved. The other document is the resolution to dissolve. The funds that were in the Compact are to be transferred to the National Association of State Departments of Agriculture (NASDA) Research Foundation. Once all Attorney General offices provide either a consent or a "no objection letter" for the dissolution (or the time for deemed consent has passed), transferring the assets to the Research Foundation would proceed, notifying the Internal Revenue Service of the dissolution and filing the final Form 990-PF for IPCC.

April 25th is the end date for the 60 day timeframe for Attorneys General to reply. The goal to have the funds transferred is June, 2013.

Please let me know if you need further information.

15. Should Tennessee's participation in the compact be continued? To what extent and in what ways would the absence of the compact affect the public health, safety or welfare?

Since the Compact is being dissolved, there is no reason for Tennessee to participate. The funds remaining in the Compact are to be transferred to the National Association of State Departments of Agriculture Research Foundation.

Jimmy Hopper
Assistant Commissioner, Regulatory Services
Tn Department of Agriculture
P.O. Box 40627
Nashville, TN 37204
615-837-5152

Recommended Modifications to the IPCC as a result of an IRS finding that the organization no longer qualifies as a 501(c)(3) public charity

The Interstate Pest Control Compact (IPCC) was formed in 1968 with the assistance of the Council of State Governments. It serves to remedy funding restraints, bridge the jurisdictional gaps that exist among federal and state governments and more adequately address the realities of dynamic plant pest infestations or outbreaks. Through contractual agreements, the Compact allows individual states to contribute to plant pest control, suppression, or eradication beyond their state boundaries. The IPCC currently has 39 members; the membership includes 38 states and Puerto Rico. For more information regarding the IPCC, the website address is: <http://www.pestcompact.org/>

The IPCC received a letter from the Internal Revenue Service indicating that it no longer qualified for a **501(c)(3) public charity** and is now designated a **501(c)(3) private foundation**. As a result of the income of the IPCC coming from investments rather than public contributions the organization does not meet the requirements to be a public charity. Reclassification as a private foundation in this event is automatic under the Internal Revenue Code and regulations. The consequence of the automatic reclassification requires action by the IPCC Executive Committee and Governing Board.

This memo will lay out some pertinent facts, propose three options and estimate the costs associated with Option I.

Consequences of the IRS reclassification. As a result of this reclassification, the IPCC will have to pay a 2% tax on investment income of the organization. For example, if the IPCC investments garner \$50,000 during a year the organization will pay \$1,000 ($\$50,000 \times 0.02$).

In addition, as a private foundation, IPCC is required to make minimum annual qualifying distributions equal to or exceeding 5% of its assets¹. If the minimum distribution is not made, an excise tax is imposed equal to 30% of the amount required to be distributed which was not distributed. For example, IPCC's assets are approximately \$1.1 million. The required minimum annual distribution would be \$55,000 ($1,100,000 \times .05$). If qualifying distributions of only \$40,000 were made in that year, an excise tax of \$4500 would be imposed ($(\$55,000 - \$40,000) \times .30$). If distributions greater than the required minimum are made in any given year, the excess can be "carried over" for five years and used in years where distributions may not meet the minimum required.

In addition to these taxes, private foundations are subject to several rules under chapter 42 of the Internal Revenue Code which do not apply to public charities and which can be burdensome in application.

¹ The actual calculation of the required distribution is more complicated but is, generally speaking, approximately 5% of an organization's assets.

Since the IRS reclassification is a major change in the financing of the organization, the IPCC president and treasurer began investigating alternative methods to reduce the tax burden to the IPCC. Dialog between Katy Coba, Oregon, current IPCC President, Dr. Mike Strain, Louisiana, current IPCC Treasurer, their staffs, NASDA and several consultants (auditors and attorneys) [the steering committee] has occurred since the February meeting of the IPCC. This document is intended to further inform the IPCC Executive Committee and ultimately the full Governing Board of the options available to the IPCC. In addition, the executive committee is still confirming some information that should be available for the calls proposed for later this month. Recognizing that some more work still needs to be completed, the process being proposed to the IPCC Executive Committee and then to the full Governing Board is as follows:

- Executive Committee final discussion on August 28, at 3 PM eastern.
- Full Governing Board call, August 31 at 3 pm eastern – per the bylaws, no actions can be taken except during a face-to-face meeting. Therefore, this call would be to inform the full Governing Board of the gravity of the issues facing the IPCC and the recommendations made by the Executive Committee, in preparation for a discussion and vote by the full Governing Board of the IPCC during the NASDA 2012 annual meeting in September (**this call must take place so the full Governing Board is fully informed prior to the September meeting**).
- IPCC full Governing Board meeting during the NASDA Meeting on September 13th at 4:00 pm central. **A quorum of members in attendance for this meeting is a necessity to make important decisions.**
- **The IPCC Governing Board will still need to make some changes to the bylaws so further work can be done without a face-to-face meeting – the bylaws are complicating this process** (we are trying to sort through these details to see if we can have two IPCC meetings within the NASDA annual meeting to take further action at that time). At this time, we are proposing having a second meeting of the IPCC during the annual meeting; the second one during breakfast on September 17th at 7:00 am central. At the present time the only topic for the agenda is the bylaws.).

Three options are outlined below; others may exist and all reasonable options will be considered.

Option I. Begin the process of dismantling the existing organization and transferring it to NASDA's 501(c)(3) Research Foundation. This action would require paying taxes on investment income and meeting minimum distribution requirements, as described above during a transition period. A distribution to the Research Foundation will count as a qualifying distribution. The full Governing Board would have to vote to dismantle the organization. This requires the organization to seek the concurrence of the States' Attorney Generals – a process that is well established; however, may take some time. Once concurrence is achieved, the transfer of the funds can occur. The management responsibility for the IPCC would transfer to the NASDA Research Foundation board of directors. In this process, the dismantling organization can transfer the funds, but may not attach any conditions on the funds that would be at odds with the exempt purposes of the NASDA Research Foundation or which would result in the board of the Research Foundation not having ultimate control and authority over the

assets and income transferred. For example, the funds could be segregated into a specific fund at the Research Foundation and designated for use as a specific purpose, provided that purpose is consistent with the exempt purposes for which the Research Foundation received its exempt status.

Option II. Continue to operate as a private foundation with the current existing structure (e.g., hire a manager to replace Charlie Coffman who has retired or designate the management function to one or more of the current board members), pay tax on investment income and make adjustments as necessary to meet annual minimum distribution requirements.

Option III. Dissolve the organization and distribute the assets to the member states. Restrictions would be required to be placed on the funds such that they could only be used for “public purposes” as defined by the Internal Revenue Code. This would also be a termination of IPCC and would require approval of the IPCC Governing Board and the State Attorney Generals. While full distribution to the states for public use will avoid tax on the termination of the private foundation and may qualify for automatic termination, it may be advisable to provide the IRS notice of the termination so as to secure the IRS’s agreement that the assets have been distributed for a public use.

Internal Revenue Service Involvement

A termination tax may be imposed on IPCC if full distribution of the IPCC assets is not made to a qualified public charity, the board of which has ultimate control and authority over the assets and income. One factor taken into account for these purposes is whether the board of the receiving organization is “independent”. A factor in board independence is the extent to which the board of the receiving organization overlaps with the board of the transferring organization, however, to what extent, members of the governing body are selected by public officials acting in their capacities as such, is also a consideration. This issue should be further examined.

Similarly, if improper material restrictions are imposed on the assets transferred an otherwise qualified public charity, IPCC’s status as a private foundation either will not terminate under the Internal Revenue Code or a taxable termination may occur. Abatement could be sought for any termination tax. Material restrictions may also have detrimental consequences to receiving public charity (which could jeopardize its exempt status if any restrictions are not consistent with its exempt purposes).

If distribution is made to the NASDA Research Foundation, counsel for the Research Foundation would advise notice of the termination be provided to the IRS for technical reasons and to seek a determination that no termination tax has been incurred.

Other Board Actions. In addition to determining the preferred course of action for the organization, the “steering committee” recommends that the IPCC Articles of Association and bylaws be amended so that other than face-to-face meetings can be used to take actions. Modifications to permit (i) vote by proxy; (ii) attendance at meetings via teleconference, and (iii) action by the governing board without a meeting with submission of ballots by electronic mail or other means (iv) or some combination of these alternatives will be suggested to be voted on by the full Governing Board in September. Without these changes, any additional actions desired by the IPCC membership would have to wait until the NASDA

meeting in February. An additional review of the bylaws is underway. Additional changes will be recommended, if deemed necessary. Under one reading of the bylaws, the vote may have to wait until February.

Likely Expenses. The board should be informed of the costs incurred in dealing with this situation. The board should determine appropriate means to defray those costs and to discuss possible future costs associated with the options (e.g., NASDA administrative costs). If the Governing Board decides to move the IPCC to NASDA's Research Foundation, below are NASDA's costs to have IPCC under NASDA's Research Foundation. These costs have been approved by Stephen Haterius.

- Audit and Tax Prep – 3,500
- Insurance – 500
- Mtg Room Rental – 1,000
- Website – 300
- Travel and Registration -2,800
- Management Fee – 5,000

This totals 13,100.

NASDA's outside counsel estimates their fees would be from \$15,000 to \$25,000. They say, as noted, termination of a normal private foundation is complex to begin with. Add to that the uniqueness of the compact (i. e., dissolution is not governed by any state law), the overlap of the Board and possible restrictions put on the use of the assets, it is very difficult to predict final costs.

No portion of this document should be construed as rendering legal advice by attorneys representing NASDA and/or the Research Foundation. Termination of a private foundation is a complex process and it is recommended that IPCC retain its own counsel with regard to recommendations for action.

INTERSTATE PEST CONTROL COMPACT

Unanimous Written Consent of the Governing Board in Lieu of Meeting

The undersigned, being all of the members of the Governing Board of the **Interstate Pest Control Compact** (the "Organization"), do hereby consent in writing, to the adoption of the resolutions and to the actions hereinafter set forth and direct that they shall, in all respects, be deemed as valid actions as though such actions and resolutions had been duly approved and authorized at a formal organization meeting of said Governing Board of the Organization held on the latest date on which a member of the Governing Board signs this document.

RESOLUTION FOR DISSOLUTION

WHEREAS, the undersigned deem it to be in the best interests of the Organization that the Organization be dissolved; and

WHEREAS, it is in the interests of the Organization to adopt a plan of dissolution for the satisfaction of the Organization's liabilities and the distribution of the Organization's assets.

NOW, THEREFORE, BE IT RESOLVED, that the Organization shall be dissolved.

IT IS FURTHER RESOLVED, that the following Plan of Dissolution (the "Plan") is hereby adopted for the assembly and marshaling of the assets of the Organization, the paying of all known debts and liabilities of the Organization, and the distribution of the Organization's remaining assets:

PLAN OF DISSOLUTION

1. This Plan shall be effective as of the latest date on which a member of the Governing Board signs this document creating a fully executed document. (the "Effective Date"). After the Effective Date, the Organization shall not engage in any business activities except to the extent necessary to preserve the value of its assets, wind up its business affairs and distribute its assets in accordance with this Plan.

2. The Organization shall first sell and liquidate all of the Organization's assets on terms and conditions, and for such consideration, as the Organization's officers deem appropriate, and such officers shall execute all instruments necessary to transfer title to such assets. The Organization shall next pay or otherwise make provision for the debts and obligations of the Organization. In addition, the Organization shall serve sufficient notice on all known creditors of the Organization and afford such creditors sixty (60) days from the date of such notice to assert or contest any claims against the Organization.

3. The Organization shall comply with all conditions of any tax exemption applicable to the Organization.

4. The Organization shall cause to be prepared and filed all returns, documents and information required to be filed by reason of the complete liquidation of the Organization, including notification of the liquidation to the Attorney General of each member State and Commonwealth.

5. After the liabilities of the Organization have been paid or provided for and upon receiving either the consent or no objection from all necessary Attorney Generals, all remaining assets of the Organization shall be distributed to The National Association of State Departments of Agriculture Research Foundation, a District of Columbia nonprofit Organization qualified under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, in accordance with the Articles of Association of the Organization.

RESOLVED FURTHER, that the Executive Committee of the Organization is authorized and directed to take all steps necessary to give effect to this resolution in accordance with the above plan of dissolution set forth herein.

RESOLVED FURTHER, that Resolution and Plan of Dissolution may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

RESOLVED FURTHER, that the proposal to dissolve the Organization may be terminated by the Governing Board of the Organization at any time before final distribution of the assets of the Organization as provided herein, even though the proposal has been adopted by the Organization.

IN WITNESS WHEREOF, the undersigned have duly executed this written consent waiving all notice requirements whether provided by statute or otherwise.

Arizona: Donald Butler

Date: _____

Arkansas: Butch Calhoun

Date: _____

California: Karen Ross

Date: _____

Colorado: John Salazar

Date: _____

Delaware: Ed Kee

Date: _____

Florida: Adam Putnam

Date: _____

Georgia: Gary Black
Date: _____

Illinois: Bob Flider
Date: _____

Indiana: Joseph Kelsay
Date: _____

Kansas: Dale Rodman
Date: _____

Louisiana: Michael Strain
Date: _____

Maine: Walt Whitcomb
Date: _____

Maryland: Earl Hance
Date: _____

Michigan: Jamie Clover Adams
Date: _____

Mississippi: Cindy Hyde-Smith
Date: _____

Minnesota: Dave Fredrickson
Date: _____

Nebraska: Greg Ibach
Date: _____

New Hampshire: Lorraine Merrill
Date: _____

New Jersey: Douglas H. Fisher
Date: _____

New Mexico: Jeff Witte
Date: _____

New York: Darrel Aubertine
Date: _____

North Carolina: Steve Troxler
Date: _____

North Carolina: Doug Goehring
Date: _____

Ohio: David Daniels
Date: _____

Oklahoma: Jim Reese
Date: _____

Oregon: Katy Coba
Date: _____

Pennsylvania: George Greig
Date: _____

Puerto Rico: Neftali Soto Santiago
Date: _____

Rhode Island: Kenneth Ayars
Date: _____

South Carolina: Hugh Weathers
Date: _____

Tennessee: Julius Johnson
Date: _____

Texas: Todd Staples
Date: _____

Utah: Leonard Blackham
Date: _____

Vermont: Chuck Ross
Date: _____

Virginia: Matt Lohr
Date: _____

Washington: Dan Newhouse
Date: _____

West Virginia: Gus R. Douglass
Date: _____

Wisconsin: Ben Brancel
Date: _____

Wyoming: Jason Fearneyhough
Date: _____